

**TESTIMONY OF LOUIS J. FREEH**  
**BEFORE THE**  
**NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES**

*April 13, 2004*

**ON WAR AND TERRORISM**

One hundred seventy years ago Clausewitz wrote that war is a political act that should be directed by the political leaders of a nation. After extensive investigation and hearings focusing on September 11, 2001, the Congressional Joint Inquiry Report concludes that "... neither President Clinton nor President Bush nor their National Security Councils put the government or the Intelligence Community on a war footing before September 11<sup>th</sup>." This unilaterally declared war culminated on September 11, 2001, and, like Pearl Harbor sixty years before it, finally pushed the United States into war. Thirty-one months after that Day of Infamy, exhaustive study by the Joint Intelligence Committee "uncovered no intelligence information in the possession of the Intelligence Community prior to the attacks of September 11 that, if fully considered, would have provided specific, advance warning of the details of those attacks." al-Qaeda and its political leadership openly declared war against America. Bin Laden's 1998 "Fatwah" declared that Americans anywhere would be killed. In August, 1998, al-Qaeda committed an act of war against America by attacking our embassies in Kenya and Tanzania. In December, 1999, one of al-Qaeda's soldiers, Ahmed Ressam, entered America to bomb LAX, as he told FBI Agents after being convicted. In October, 2000, al-Qaeda successfully attacked a powerful United States warship in the Port of Aden.

The complex question before the Commission is why the political leadership of our nation – which includes Presidents and Congresses – declared war back on al-Qaeda only after that horrific day. Bin Laden had been indicted years before for blowing up American soldiers and Embassies and was known as a clear and present danger to the United States. Endless and ultimately useless speculation about "various threads and pieces of information," which are certainly "relevant and significant," at least "in retrospect," will not take us very far in answering this central question. 'What would have happened had the United States declared war on al-Qaeda before September 11<sup>th</sup>?'

President Clinton along with his National Security Advisor, Sandy Berger, and Attorney General Janet Reno were clearly focused on terrorism during my tenure. Based upon my observations, President Bush and Dr. Rice were equally committed.

On January 26, 2001 at 8:45 a.m., I had my first meeting with President Bush and Vice President Cheney. They had been in office four days. We discussed, among other things, terrorism and in particular al-Qaeda, the East African Embassy bombings, USS Cole attack and the June, 1996 al Khobar bombing in Saudi Arabia. When I advised the President that Hizballah and Iran were

responsible for the Khobar attack, he directed me to follow-up with National Security Advisor Dr. Condoleezza Rice. I did so 2:30 p.m. that afternoon and she told me to pursue our investigation with the Attorney General and to bring whatever charges possible. Within weeks, a new prosecutor was put in charge of the case and, on June 21, 2001, an indictment was returned against thirteen Hizballah subjects who had been directed to bomb Khobar by senior officials of the Iranian government. I know that the families of the 19 murdered Khobar Airmen were deeply grateful to President Bush and Dr. Rice for their prompt response and focus on terrorism.

I firmly believe that any American President and Congress faced with the reality of September 11 would have acted swiftly and overwhelmingly as did President Bush and the 107<sup>th</sup> Congress. They are to be commended for their courageous political leadership and decisiveness. However, those who came before him can only be faulted if they had the political means and the will of the Nation to declare a war back then but failed to do so. The fact that terrorism and the bloody war being waged against us by al-Qaeda was not even an issue in the 2000 Presidential campaign strongly suggests that the political means and will to declare and fight this war didn't exist before September 11.

All of this is not to say that the intelligence and law enforcement communities could not have done more to protect the nation from a September 11. That is a truism applicable to multiple agencies and two branches of government including the FBI. As FBI Director I certainly share in that responsibility. And I don't know of any FBI Agents who would have not given their lives – two did – to prevent September 11 from happening. These are America's finest men and women and I am proud to have served with them. The Joint Intelligence Committee and now the 9/11 Commission are properly seeking to understand and to explain to the country how September 11 was able to happen. But the grand failure to comprehend the contrast between the pre-9/11 fight against terrorism with the total war being waged since September 11 would ignore an immensely significant historical and political dialectic.

For us, the 1993 attack upon the World Trade Center (“WTC”) by foreign-trained terrorists powerfully focused the FBI on homeland security and prevention as its counterterrorism priority. Excellent investigation and skillful prosecution by the United States Attorney's Office for the Southern District of New York effectively identified the terrorists involved. Those who were quickly captured were tried and convicted. Ramsi Yousef, a terrorist mastermind, fled to Pakistan along with Khalid Shaikh Mohammed, now believed to be one of the principal architects of the September 11 attack. The FBI's 1993 criminal investigation identified and stopped another plan by Sheik Rahman to blow up NYC tunnels, bridges and buildings resulting in the deaths of thousands of Americans (“Terrstop”). Important lesson learned – good investigation is also good prevention. Two years later, FBI Agents surprised Ramsi Yousef at a Bin Laden sponsored guesthouse in Pakistan and brought him back to Foley Square where he was tried and convicted for two terrorist attacks. Beside the 1993 WTC murders, Yousef was also convicted for his plot to blow eleven United States airliners out of the Pacific skies thereby killing hundreds of Americans. Yousef and his terror cell had even experimented with a bomb which had already killed a Japanese airline passenger but failed to down the aircraft. Yousef's arrest and return to face American justice was the result of long and painstaking investigation. Important lesson repeated – investigation is prevention and it also saves lives.

Yousef's arrest taught another valuable lesson to the FBI. His apprehension in Pakistan was enabled by the fact that an FBI Legat was assigned to Islamabad in 1996. An FBI Legat is a "declared" FBI Agent who serves as our liaison and ambassador with the host country's law enforcement and security services. Our Legat made it possible to find and arrest Yousef. The expansion of our Legat Offices from 19 to 44 (1993-2001) was an integral part of the FBI's counterterrorism strategy. As I wrote to the Congress in June, 1996, "The FBI believes that it is essential to station more of its highly skilled Special Agents in other countries to prevent foreign terrorism and foreign crime from reaching into the U.S. to kill and harm Americans in their own workplaces, streets, homes, and houses of worship." We determined in 1993 that the FBI also needed Legats in Tel Aviv, Cairo, Ankara, Riyadh, Amman, Tashkent and Almaty – not to pursue white collar crime but to pursue and deter terrorists from murdering Americans. We later proposed Legats in Tunis, Kuala Lumpur, Jakarta, Rabat, Sana, Tbilisi and Abu Dhabi. The FBI and CIA narrowly missed grabbing Khalid Shaikh Mohammed in 1996 as he was about to travel from Doha to the United Arab Emirates. Only because we had an arrest warrant for him was capture an option. No doubt FBI Legats in those countries at the time would have improved our chances of success.

Complex FBI terrorist "cases" – as with our investigations into KGB operations, Cosa Nostra Families, public corruption, civil rights and complex financial crimes – are designed and run to collect maximum information, evidence and intelligence in order to prosecute and preempt such activities. Cases such as United States v. Bin Laden, et al, tried successfully in New York City from January 2001 to May 2001, was just one byproduct of an international program which targeted Bin Laden and al-Qaeda, ongoing since the 1993 WTC bombing when his name first surfaced as an organizer and financier of military training camps in Afghanistan. Specific "case focus" on particular defendants for possible terrorist acts in certain places and times – a good thing when it results in their capture and elimination – is only one more obvious part of a comprehensive FBI counterterrorism program.

Prior to the 1993 WTC bombing, FBI Agents in our New York Office developed sources who reported in 1989 that foreign-born Muslim men were meeting at shooting ranges in New York and Connecticut and training with AK-47s. Photographs of some of these "shooters" were later identified as subjects in the 1990 murder of Meir Kahane in New York and the later 1993 WTC bombing and Terrstop cases. FBI Agents following "leads" in the 1990 Kahane murder case learned that the Al Kifah Refugee Center and Al Farooq Mosque in Brooklyn, New York, were recruiting stations for "soldiers" from the United States to Afghanistan to fight in the Soviet "jihad."

The men and women of the FBI and New York Office in particular have done an extraordinary job in pursuing and preventing terrorism over the decade preceding 9/11, thereby saving countless lives by their courage and skill. They deserve our gratitude and respect. In October, 2000, for example, FBI Agents in New York obtained a valuable piece of intelligence – which, when relayed to the Egyptians, resulted in the October 19, 2000 arrest of that country's top terrorist, Alaa Abb al Razia Atia, wanted for the Luxor massacre. Egyptian officials also believe that, at the time of his arrest, he may have been planning to assassinate President Clinton on a visit to Sharm el-Sheikh.

Some history here is important. The FBI's first Joint Terrorism Task Force (JTTF) was formed in New York over 20 years ago. Through the development of operational sources and cooperation, the FBI first identified the roots of radical-fundamentalist terrorism in the United States; these investigations date back to the late 1980s. These investigations quickly made the connections to international terrorist groups around the world.

The FBI's mission has always been the proactive targeting and identification of potential terrorism threats. To that end, numerous successful cases were developed throughout the 1980s and 1990s that led to the identification of al-Qaeda as one of these threats.

FBI investigators seek to pursue all leads to their logical end, and follow those leads wherever they may take us. Leads are unfortunately developed in the wake of terrorist attacks, but more often they are developed proactively, through sources and cooperators. In multiple instances FBI investigations have disrupted planned attacks in the United States. Moreover, FBI investigation has significantly contributed to the identification of al-Qaeda's leadership, organization, methods, training, finances, geographical reach and intent. Through the pursuit of leads, the FBI's investigation of Usama Bin Laden and al-Qaeda can fairly be credited with having "jump-started" similar investigations in countries around the world, and in Europe in particular. The importance given to developing the FBI's information on international terrorist groups was one of the motivating factors for the expansion of the Legal Attache program. There should be no doubt that the FBI has, and continues to make, significant contributions to prevent terrorism. The FBI is extremely effective in conducting interviews, and in putting together both criminal and intelligence cases, all built upon information obtained through detailed and thorough investigations that are factually substantiated and corroborated. The fundamental objective of our investigations, criminal or intelligence, is to reach the highest level of proof – truth – about that which we investigate. Information obtained through law enforcement channels – whether testimony, documents, records, photographs, forensic evidence or the results of interviews – provide the purest form of intelligence. This, combined with the high level of personal and public accountability demanded of the FBI, lends tremendous credence to the information that the FBI develops and shares.

Prior to 9/11/01, the United States Government recognized the need to take advantage of "all the tools in the Government's box" in the fight against terrorism. This was one of the primary reasons that the Joint FBI-CIA entity, previously known as ALEC Station, was formed in pursuit of Bin Laden and al-Qaeda. Together, the FBI and CIA worked together, preserving the option of criminal prosecutions of terrorist subjects without interfering with intelligence gathering. The FBI is in the unique position of being authorized to exploit the techniques and authorities available to both the intelligence and law enforcement communities.

Short of total war, the FBI effectively and relentlessly did its job pursuing terrorists, always with the goal of preventing their attacks. Our May 8, 1998 Strategic Plan identified in "Tier One: National ... Security - ... terrorist ... activities that directly threaten the national ... security ...." "Strategic Goal: Prevent, disrupt, and defeat terrorist operations before they occur. Terrorism, is both international and domestic, poses arguably the most complex and difficult threat of any of the threats for which the FBI has a major responsibility ... New predators ... have attacked United States interests at home and abroad ... The dilemma, of course, is that the new

perpetrators, targets, and weapons exist in almost unlimited numbers, while the law enforcement resources arrayed against them are finite.” In our 1999 Public Report we wrote that “... the FBI has no higher priority than to combat terrorism; to prevent it where possible ... our goal is to prevent, detect and deter.”

The FBI’s pre-9/11 Counter-Terrorism (CT) resources were both finite and insufficient – 3.5 percent of the entire government’s CT-budget – to meet the enemy against us. In 1993 we had under 600 Special Agents and 500 support positions funded for counter-terrorism. By 1999 we had more than doubled our personnel and tripled the FBI’s CT budget to \$301 million. We knew it was not enough. For Fiscal Years (FYs) 2000, 2001 and 2002 the FBI asked for 1895 Special Agents, analysts and linguists to enhance our CT program. We got 76 people for those three critical years. FY 2000 was a typical example: 864 CT positions at a cost of \$380.8 million requested – 5 people funded for \$7.4 million. This is not a criticism of the Department of Justice (DOJ), White House or Congress – that is how political Washington makes its budgets, balancing competing needs against limited resources. The point is that the FBI was intensely focused on its CT needs but antebellum politics was not yet there. By contrast, after September 11, the FBI’s FY 2002 Emergency Supplemental CT budget was increased overnight by 823 positions for \$745 million. The al-Qaeda threat against America was the same on September 10<sup>th</sup> and September 12<sup>th</sup>. Nothing focuses a government quicker on a critical mission than a war.

Prior to September 11 the FBI relentlessly pursued criminal investigations, renditions and prosecutions of terrorists, particularly Bin Laden and al-Qaeda. This was an integral part of two Administrations’ CT strategy. This course was not pursued because anyone believed indicting Bin Laden and issuing arrest warrants for al-Qaeda’s leaders would stop their war against America. In fact, we always viewed this law enforcement action as limited in scope and completely secondary in terms of protecting national security. However, aside from cruise missiles, armed Predators and invading countries which harbored terrorists against America, this was our chosen path. Sometimes it worked. Yousef’s arrest and return to an American prison didn’t happen without an active arrest warrant. After Kasi’s brutal murders of CIA personnel in Langley, Virginia, it was his indictment that led to his arrest by FBI Agents in Pakistan and murder convictions back in Fairfax County. We continue to pursue the arrest and rendition of Hizballah’s military commander al-Mugniyah and his co-killers ali-Atwa and Izz- Al-Din for the murders of our Marines in Lebanon and Navy diver Robert Stethem. Their ultimate capture and punishment may rest upon their FBI arrest warrants. The al-Qaeda terrorists who destroyed our East African embassies and almost sunk the USS Cole have all been indicted and are now hounded by FBI Agents as well as by CIA officers and our armed services. Even the United States Administrators and generals in Iraq have recently gone after the “outlaw” Moqtada al-Sadr with an arrest warrant.

During my briefing of Senators Shelby and Kerrey following the East African bombings, then Senator Kerrey asked why the FBI was investigating an “act of war” against the United States. My answer then and now is the same. In the absence of military engagement against these terrorists, we have to pursue all other available options including capture and arrest.

Of course the FBI was relentless in indicting and pursuing the thirteen terrorist agents of Iran who blew up Khobar Towers in 1996 killing 19 of our Airmen and horribly wounding hundreds

more. Why were we pursuing this case? Certainly not because we thought that arrest warrants for thirteen fugitives protected by Iran was the best way to stop that country from sponsoring terrorist attacks against America. A quick poll of FBI Agents would clearly prefer a military operation against that rogue state to retaliate for the Khobar killings as the more effective course of action. But again, short of warring back, there is a fundamental but in some quarters misunderstood notion about why it's a good thing to at least have such an arrest warrant. Experience has taught the FBI that we never know the place and time – not of our choosing – when one of these hard-to-capture-in-foreign-safe-havens- terrorists is suddenly found traversing an airport or within-the-grab of a country or security service which will remit to us or to a “friendly” place only because we have a warrant. Hence the FBI always wanted to be in a position where – like the time with Khalid Shaikh Mohammed – we could capture such a high value terrorist target in a rare chance because we had taken the trouble to get an indictment and a warrant.

We await the day when Mughassil – the field commander of the Khobar attack – leaves Iran and is taken by us. Or, as with the Pan Am 103 mass murders by Libya, the United States and the international community decide to apply huge political pressure on this state sponsor to give up its terrorists to justice. And so we wait with court process not because we think the rule of law and American judicial process is always the best defense against terrorism – it's not – but because it gives America's terror victims another means for justice.

Pre-9/11, the FBI used all the means at its disposal to capture Bin Laden and to prevent his future attacks against America. The FBI and CIA actively targeted al-Qaeda and Bin Laden beginning one year before the East Africa embassy attacks on August 7, 1998. Together these agencies were able to indict Bin Laden prior to August 7 for a plot to murder American soldiers in Yemen. In November, 1998, Bin Laden was indicted a second time for the embassy bombings and put on the FBI's Top Ten list in April, 1999. In 1999 a dedicated Bin Laden Unit was established at FBIHQ and the CIA-FBI Bin Laden station began to operate covertly on an international basis. Of course, our arrest warrants standing alone were pieces of paper without the means to execute them. The United States armed forces provided that means to the FBI and DEA in 1988 by invading Panama in order to allow Agents to arrest Noriega – a notorious narcoterrorist responsible for the deaths of countless Americans at the time. Similar means to capture Bin Laden did not become available until October, 2001, when Afghanistan was so successfully invaded by our armed forces.

Before then, diplomacy and other means were tried. The United States brought political pressure on the Taliban through its allies to turn over Bin Laden but to no avail. The DCI and FBI Director sorted through a series of proposed, covert actions designed to capture Bin Laden on the ground in Afghanistan and bring him to justice. None of the plans appeared to have any chance of success and were not approved. Finally, on April 6, 2000, after consultation with the National Security Advisor and Department of State (DOS), I met with then Chief Executive Pervez Musharraf at his military compound in Lahore and requested his personal assistance in capturing Bin Laden. Musharraf was polite but unhelpful. He explained that he had personal assurances from Mullah Omar that Bin Laden was innocent of the East African bombings and had abandoned terrorism. We gave Musharraf and his military leaders an extensive briefing of our evidence against Bin Laden and al-Qaeda and followed-up our meeting by sending additional

FBI Agents and an Assistant United States Attorney from New York City to Pakistan to make the case for arresting Bin Laden. It was clear that short of America declaring war against Bin Laden and his Taliban accessories, Pakistan was not going to help America get this terrorist out of Afghanistan.

The FBI nevertheless made extensive preparations for the war to come and continuously enhanced our CT program and capabilities. In November, 1999, for example, we created a new FBI Counter-Terrorism Division as well as an Investigative Services Division to support our CT Program with analysts and intelligence capabilities. Nobody in the Executive or the Congress suggested we do this. We did it because we were focused on enhancing this critical program. This major reorganization of FBIHQ and CT assets in our 56 Field Offices represented a major commitment to preventing terrorism and enhancing our intelligence bases. It took the Office of Management and Budget (OMB) and the Congress a full nine months to approve this reorganization and allow the FBI to enhance its CT program. Again, this long delay clearly reflected that – as with the FBI’s CT budgets in these years leading up to September 11 – CT lacked the political priority which a declared war would soon militate.

At the same time we doubled and tripled the JTTFs around the United States so we could multiply our forces and better share intelligence and CT operations with the FBI’s federal, state and local enforcement partners. Thirty-four of these JTTFs were in operation by September, 2001.

Other initiatives were taken as well. The FBI was given national responsibility for coordinating the protection of the Nation’s critical infrastructure. As a result, we created the National Infrastructure Protection Center (NIPC) at FBI Headquarters which had critical responsibilities regarding terrorist threats, cyberattacks and sharing intelligence with both government agencies and the private sector.

The FBI was also tasked to set up the National Domestic Preparedness Office to counter terrorist threats and to enhance homeland security.

We began making preparations for the 2000 Olympics, the Millennium, United Nations and NATO meetings in New York City, World Cup, IMF-World Bank events, presidential conventions and other major special events like the 2002 Olympics which absorbed vast numbers of FBI Counter-Terrorism resources.

At the same time, we were conducting major terrorism investigations leading up to the successful prosecution in New York City of the al-Qaeda members who attacked our embassies in Africa.

We stood up the massive Strategic Information Operations Center (SIOC) at FBI Headquarters whose main purpose was to give us the capability to work several major and simultaneous terrorist matters at the same time and to share real-time information with many agencies – federal, state and local.

We established the FBI’s Counter-Terrorism Center at FBI Headquarters which was coordinated with the CIA’s Center by communications, information exchange, and personnel staffing. In

terms of intelligence sharing the FBI's CTC Center had full-time representatives of numerous federal, state and local agencies who received information as we received it.

We instituted MAX CAP O5 in July 2000 to enable each of the FBI's 56 Field Offices and their Special Agents in Charge (SAC) to improve our counter-terrorism efforts, analyze threats and develop capabilities and strategies throughout the United States. Regional SAC Conferences were held during the summer of 2000 to roll out the MAX CAP O5 strategy.

We set up a national threat warning system in order to disseminate terrorism-related information to state and local authorities around the country.

We organized and carried out a significant number of national, regional and local practical exercises to help the country prepare for terrorist attacks.

Attorney General Janet Reno and I conducted regular meetings with the National Security Advisor and the Secretary of State dedicated to terrorism issues, cases and threats.

I met with Presidents, Prime Ministers, Kings, Emirs, law enforcement, intelligence and security chiefs in 68 countries around the world, 2,100 foreign leaders in all. The primary reason for these contacts was to pursue and enhance the FBI's counter-terrorism program by forging an international network of cooperation where intelligence could be shared.

We proposed and briefly received from Congress the authority to hire critical scientists, linguists and computer specialists without the salary restrictions of Title V. This flexibility is critical to fighting terrorism.

The DOJ and the FBI prepared hundreds of FISA Court applications in counter-terrorism matters where electronic surveillance or legal assistance was required from the Court.

I regularly met and discussed counter-terrorism issues, intelligence and force protection issues with the Attorney General, the National Security Advisor, United States Attorneys, the Secretaries of State and Defense, our Ambassadors and the Joint Chiefs of Staff.

All of these initiatives happened because prior to September 11 the FBI was intensely focused on preventing foreign terrorists from attacking targets inside the United States. As noted, the 1993 WTC bombing dispelled any notion that terrorists were content to blow up embassies, warships and Americans overseas.

More convincingly, the failed efforts by Ressaam and his New York City-based co-conspirators to carry out a major terrorist attack within the United States at the end of 1999 made the FBI focus intently on protecting homeland security. Indeed, the FBI investigation of the USS Cole attack and CIA efforts overseas led to our conclusion that the millennium attacks by Ressaam on the West Coast were planned to coincide with other al-Qaeda sponsored terrorism in Jordan and in Yemen. The Jordanian attack was prevented by the CIA acting together with the Jordanian General Intelligence Department (GID) to stop it. In January, 2000, the al-Qaeda suicide bombers of the USS Cole had previously planned to attack another United States warship – The

USS Sullivans – which was docked at the same fuel pod the USS Cole used in October 2000. The earlier attack was postponed because the bomb-laden attack boat sunk when it was launched.

So before the end of 1999, the FBI and the intelligence community clearly understood the immediacy of the foreign-based al-Qaeda threat regarding targets within the United States. Congress and the Executive were fully briefed as to this threat analysis.

In several appearances before Congress, I used a chart to depict the locations around the United States where radical fundamentalists cells were active. The FBI fought unsuccessfully to continue fingerprinting and photographing visiting nationals from key state-sponsors of terrorism like Iran because intelligence agents were being sent here to support these radical elements.

The recurrence of a domestic terrorist attack was always understood. For example, as we prepared for and conducted the several, major trials of al-Qaeda members – Usama Bin Laden was charged as a defendant in those indictments – in New York City, during 1999-2000, extraordinary security steps were taken to prevent an al-Qaeda attack. If any of you saw Foley Square, the federal courthouse and the area around City Hall, 26 Federal Plaza and the New York Police Department Headquarters during this time, it was totally fortified. The closed streets, cement trucks, barricades, checkpoints and hundreds of heavily armed officers and agents were not set up to prevent the al-Qaeda subjects from escaping. These unprecedented security measures – enhanced after September 11 – were designed to stop al-Qaeda attacking the court which found their own members guilty of blowing up our embassies in Africa.

We studied the 1995 Tokyo subway sarin gas attack and FBI personnel disseminated the intelligence to transit officials in New York City and around the United States.

Similarly, Pennsylvania Avenue was ordered to remain closed by two National Security Advisors and the White House after the United States Secret Service Director and I made a presentation which showed that a terrorist vehicle bomb could destroy the West Wing.

Prior to September 11, an incredible number of innovative and costly measures were regularly implemented by the FBI and the law enforcement community around the country – at special events, conventions, inaugurations, public gatherings – to prevent, among other threats, foreign based terrorists like Ressaam and Yousef from attacking targets here. The radical fundamentalist threat posed a clear and present danger here and the intelligence community and political leaders understood it to be the case.

Protecting our homeland from attacks by foreign terrorists had long been the FBI's priority. Going back to 1994, then Deputy Attorney General Jamie S. Gorelick asked me as head of the DOJ's Office of Investigative Agency Policy to review the Department's policies and practices regarding aliens entering and leaving the United States – this in response to the 1993 WTC bombing and the Kasi murders outside CIA Headquarters – both attacks linked to aliens. I recommended in September, 1994 that the Department strengthen investigative powers against suspected "undesirable aliens," accelerating deportation appeal proceedings and limiting United States participation in a visa waiver pilot program under which 9.5 million foreigners entered the country in 1994. I also recommended at the time that we include provisions for the detention and

removal of undesirable aliens, under the jurisdiction of a special, closed court procedure. I also criticized alien deportation appeal procedures which oftentimes took years to conclude without valid grounds. Finally, I recommended legislation to provide the FBI with “roving” wiretap authority to enhance our ability to investigate “aliens’ terrorist activities in the United States.” President Clinton requested that authority in 1996.

At the same time, the FBI was critically active in focusing on the terrorist threat to Americans overseas, our first line of defense. This was, as I described, the centerpiece of the FBI’s dramatic expansion of our Legat Offices around the world.

The FBI must have this foreign presence and capability to carry out an effective counter-terrorism policy, especially when it comes to prevention.

In July, 1994, I visited Russia and nations formerly part of the Soviet Union. We recommended to the President that “Every reasonable step must be taken promptly to prevent nuclear materials from falling into the hands of rogue nations or terrorist groups that might use them against the United States.”

When I left the FBI, I had proposed that we establish an FBI training facility in Central Asia, as we had done in Budapest in 1995, and had begun in Dubai, to enhance our ability to establish liaison and critical points of contact in those important regions. There is absolutely no substitute for these liaisons and relationships. Without them we risk being blind.

Many FBI personnel and I spent an enormous amount of time traveling overseas in order to establish an international counter-terrorism capability. Because of that, in 1998, I was able to negotiate the return of two al-Qaeda bombers from Kenya so they could be tried and convicted for the embassy bombings.

My April, 2000 meeting with Musharraf in Pakistan also negotiated the availability of a critical witness in one of our major terrorist prosecutions in New York who Musharraf permitted to testify at the trial.

In 1996, I met with Presidents Nazarbayev and Karimov of Kazakhstan and Uzbekistan, respectively, and discussed radical fundamentalist terrorism directed against the United States from Afghanistan and Iran. I asked for their help in fighting these threats to America as well as to them.

I traveled extensively – as did scores of FBI men and women – throughout the Mideast, Central Asia, Africa, Asia, the Persian Gulf and South America with the objective of strengthening the FBI’s counter-terrorism program so we could better protect America.

Dozens of FBI Special Agents went to places like the Triborder Area in South America, South East Asia, Africa, Greece, Georgia, Russia and many other places to carry out the FBI’s counter-terrorism mission. We sent a team of FBI Agents to Buenos Aires to review the bombings of the Israeli Embassy and Jewish Cultural Center – for which Iran and Hizballah were suspected.

History and experience have shown that the FBI's expansion overseas has paid immense dividends in terms of enhanced capability, prevention and enforcement. The United States' rapid response after September 11 was based in part on this existing infrastructure.

For example, during our examination of the forensic evidence from the USS Cole case it was discovered that the explosive used was possibly manufactured in Russia. Because the FBI had been working in Russia since 1994, I was able to call the FSB Director and ask for assistance. His response was immediate. Russian explosive experts provided the FBI with all the necessary forensic and expert information requested, helping the case immensely. I could provide dozens of other examples of how the FBI's expanded Legat Program has directly supported our efforts to protect America from terrorists.

In the run-up to September 11, after which millions of dollars instantly flowed through the FBI to establish a modern, information technology infrastructure, rewiring the FBI was slow and frustrating. We didn't wake up one day in the mid-1990s and realize that our IT systems were unable to perform even basic functions, such as email and electronic files available in other government agencies and the private sector. We identified upgrading IT in our 1998 Strategic Plan as one of three areas most critical to the FBI's success. In repeated appropriations' hearings and CT presentations to Congress throughout the late 1990s and continuing through 2001, the FBI sounded the alarm for IT modernization. As far back as 1992 we estimated that a badly needed five-year IT upgrade plan would cost \$432 million.

Our 1998 budget proposal to the Congress for technology improvements or ISI as we called the project was part of the Fiscal Year 1999 appropriations request. We sought a total of \$70 million for ISI, consisting of \$20 million from base IT funding and an increase of \$50 million in new budget authority for ISI. Congress appropriated \$2 million of the requested increase, to be used for additional personnel to support ISI, and directed the Attorney General to make available \$40 million from the Department's Working Capital Fund. However, Congress prohibited the FBI from spending any of these funds, including the \$20 million from the FBI's base IT budget, until a comprehensive implementation plan was submitted to the Congress.

During the FY 2000 appropriations cycle, we proposed a total of \$58.8 million for ISI, consisting of \$20 million from base IT funding and an increase of \$38.8 million in new budget authority. The FY 2000 appropriation for the FBI provided no new budget authority and again prohibited the FBI from obligating any available funds for ISI until the Congress approved the ISI plan.

After receiving Administration (DOJ and OMB) clearance, the FBI again submitted the ISI plan to the Congress in March 1999; however, the plan was not accepted. A revised plan was submitted in August 1999. Still this plan was not approved. We continued to talk with the Congress and we presented alternate funding scenarios, but could not reach agreement. There was universal agreement that the FBI needed the IT upgrade requested; however, there was disagreement on the type of contract vehicle being proposed, how much the FBI could or should do using in-house capabilities versus contractors, deployment to field offices, staging of the capabilities within each phase, and cost.

While awaiting approval of the ISI plans, the FBI had extended the bids submitted for the ISI contract. However, it became necessary to cancel the procurement in November 1999 due to our inability to reach agreement and release of funding for ISI.

Due to the restrictions on spending any funds for ISI, the FBI was precluded for a critical two year period from replacing or upgrading many elements of its IT infrastructure since these items were encompassed by the ISI plan. This was particularly damaging since \$40 million of the embargoed funds were from our base IT budget that were normally used for basic refreshment and upgrades of existing equipment and systems. Desktop computers grew older and more obsolete; network switches, servers, and other equipment become more fragile and more prone to breakdown.

We came back to the Congress in the FY 2001 budget with a request for a total of \$60 million in funding for FBI information technology infrastructure upgrades, consisting of \$20 million from base IT funds and \$40 million in new budget authority. In March 2000, we also submitted yet another plan, entitled, e-FBI: Three Year Implementation Plan, Architecture, Schedule, Cost, and Program Management Details. This plan was built around a Congressionally suggested funding stream of \$200 million, or half the amount initially proposed by the FBI for ISI.

In early 2000, I recruited Bob Dies, who had recently retired from IBM, to come in and rework our proposal to get this done. Subsequently, in September 2000, Mr. Dies submitted to the Congress a revised investment plan, entitled, FBI Technology Upgrade Plan, Reprioritized Three-Year Implementation Plan. That plan called for spending a total of \$380 million to build a basic information technology infrastructure with every expectation that much more would be needed to achieve anything approaching state of the art and interagency interoperability.

The new plan was built around three components: information presentation, transportation network, and user applications. Congressional clearance for the new plan came in September 2000 and the FBI was allowed to spend \$100.7 million for first year costs of the plan. That \$100.7 million consisted of the \$80 million that was banked from FYs 1999 and 2000, plus \$20.7 million from base IT funding. Contracts for the Trilogy program, as the revised plan became known, were finally awarded in May and June 2001.

The last FBI budget proposal that I presented to the Congress – for FY 2002 – included a request for \$67.7 million for the second year costs of the Trilogy program. Congress provided the full amount needed for year two Trilogy costs and, in subsequent supplemental appropriations, provided even more funding for Trilogy and other FBI IT investments. After September 11 by contrast, billions of dollars for IT funding poured into the FBI and the FBI was instructed to accelerate deployment.

Besides Trilogy, the FBI dedicated its efforts to obtain critical technology assistance to combat terrorism. In 1994, as a result of the FBI's own initiative, Congress passed the Communications Assistance to Law Enforcement Act (CALEA). This critical statute was vital to ensuring that law enforcement could maintain the technical ability to conduct court-authorized electronic surveillance. Against tremendous opposition, the FBI persuaded Congress that this selectively-utilized technique was essential to working its most complex criminal and national security

cases. The law simply allows the FBI to continue its court-controlled use of this capacity as the telecommunications world changes from an analog to digital network. It has taken most of the last eight years to fund and to implement CALEA and faster progress needs to be made.

But CALEA simply permits the FBI to maintain court-approved access to digital communications and stored data. Another technical challenge called encryption then and now threatens to make court-authorized interception orders a nullity. Robust and commercially available encryption products are proliferating and no legal means has been provided to law enforcement to deal with this problem, as was done by Parliament in the United Kingdom. Terrorists have been able to exploit this huge vulnerability in our public safety matrix.

In 1998, HPSCI adopted a substitute bill to S.909 which effectively addressed all of law enforcement's public safety and terrorism-related concerns regarding encryption products. Unfortunately, this needed counter-terrorism assistance was not enacted. As we know from Ramzi Yousef's encrypted computer files found in Manila, terrorists are exploiting this technology to defeat our most sophisticated methods to prevent their attacks. I have long said that this unaddressed problem creates a huge vulnerability in our nation's counter-terrorism program. Neither the Patriot Act nor any other likely-to-be-enacted statute even attempts to close this gap. Resolving this issue is critical to homeland security.

In 1995 Congress authorized at our request the establishment of an FBI Technical Support Center (TSC). The purpose of this facility was to provide federal and local law enforcement with the technical tools to improve court-authorized telecommunication interceptions and signal access for investigative purposes. I was pleased to see that this critical center was finally funded right after September 11.

In addition to CALEA, TSC and our encryption initiative, the FBI made enormous strides to equip itself to fight terrorism. We stood up at FBIHQ the National Infrastructure Protection Center (NIPC) to become the center of expertise for computer forensics and cybersecurity. We opened the massive SIOC which has the technical capacity to operate multi-theater CT operations and overseas investigation with interagency computer, shared data bases and space-age communications. A new FBI Laboratory was opened at Quantico, Virginia, capable of performing the most sensitive and high-end forensic examinations in conjunction with our National Laboratory network. We began issuing laptop computers to our graduating Special Agents at Quantico in order to accelerate technology distribution to the field. All of these efforts focused on building a technology platform from which we could take the fight to the terrorists.

During my tenure as FBI Director, I was immensely proud of the cooperation and integration of FBI and CIA efforts to combat terrorism. Myself and recent DCIs, particularly George Tenet, have taken bold and unprecedented steps to work together and forge an effective FBI-CIA partnership to combat terrorism. Exchanging senior officers, standing up the joint Usama Bin Laden/al-Qaeda operations and intelligence center, fully coordinating our Legats and Station Chiefs, cross-training and many additional measures were taken to integrate our counter-terrorism resources and capabilities. Our joint efforts in the East Africa and USS Cole bombings is a template for how successful we were in working together. Some of these efforts cannot be described in this session.

This historical and successful integration does not mean that on every possible point of intersection, a lapse did not occur. But to focus on those isolated instances while ignoring the huge successes of this top-down directed integration, is misplaced. I personally credit George Tenet with making this happen and winning the trust and respect of the entire FBI in the process.

The best confirmation of this fully integrated FBI-CIA counterterrorism effort is the fact that during my tenure no chairman or member of the Intelligence Committees raised with me – or the DCI to my knowledge – the issue of our agencies being uncooperative or adverse to working together. Conversely, it was repeatedly pointed out to me by these Committees that the FBI and CIA were working together in an exemplary manner.

We must acknowledge that the rules are changed beginning with certain provisions of the USA Patriot Act. The Department of Justice and the intelligence agencies have been given new tools to combat a dangerous enemy who follows no rules. Some of these new authorities have been granted by the Congress with a sunset provision. Some asserted by the government are being challenged in the courts, where they will ultimately be decided.

It must always be understood that prior to September 11, the FBI – as it always must – followed the rules as they were given to us by the Attorney General and the Congress. For example, FBI Agents were not permitted without special circumstances to visit a suspect terrorist group's web site or to attend its public meetings. Counterintelligence, Domestic Terrorism and Informant Guidelines promulgated years ago and updated with new restrictions curtailed our ability to collect information in national security cases. Those guidelines are now being changed. "Primary purpose" requirements for FISA applications and information separation structures limited the sharing of criminal and intelligence information. For two decades the Department of Justice constructed the wall between counterintelligence and law enforcement higher and higher to a height which far exceeded common sense and the plain meaning of the underlying 1978 statute.

Finally, on November 18, 2002, the United States Foreign Intelligence Surveillance Court of Review reversed the May 17, 2002 decision by the Foreign Intelligence Surveillance Court, correctly concluding that the lower court's self-constructed barrier between counterintelligence/intelligence officials and law enforcement officers was based on the lower court's assumption but not supported or required by the Foreign Intelligence Surveillance Act (FISA), as amended by the Patriot Act, or the Constitution. Not surprisingly, the Court of Review looked at the plain language of 50 U.S.C. §1801(e)(1) and concluded that an agent of a foreign power seeking information relating to "actual or potential attack(s)," "sabotage or international terrorism" and "clandestine intelligence activities" against the United States is simultaneously violating criminal statutes of the United States. Therefore, FISA evidence which allows the prosecution of spies, terrorists and saboteurs most certainly relates to the nation's ability to protect its national security – which is the primary purpose – to use the phrase correctly – of the FISA statute.

Just as importantly, going beyond the Patriot Act and examining the original 1978 FISA statute, the Court of Review found it "quite puzzling that the Justice Department, at some point during

the 1980s, began to read the statute as limiting the Department's ability to obtain FISA orders if it intended to prosecute the targeted agents – even for foreign intelligence crimes.” (Opinion at 10) Conversely, the Court of Review found that the plain language of FISA as well as the legislative history makes it absolutely clear “that arresting and prosecuting terrorist agents of, or spies for, a foreign power may well be the best technique to prevent them from successfully continuing their terrorist or espionage activity.” (Opinion at 12-13)

In sum, the Court of Review makes a compelling case that the 1978 FISA never should have precluded or limited the government's use or proposed use of foreign intelligence information – including evidence of crimes – in a criminal prosecution.

Over many years, a confusing, shifting and uncertain morass of court and Department of Justice guidelines (See DOJ Procedures for Contacts Between the FBI and the Criminal Division Concerning Foreign Intelligence and Foreign Counterintelligence Investigations, July 19, 1995), misinterpretations and requirements burdened the task of legitimately using FISA to protect the nation's national security.

I repeatedly testified before Congress that FBI Agents were statutorily barred from obtaining portions of credit reports on certain national security subjects which used car dealers could order and read.

And when I left the FBI in June 2001, we were being criticized in some quarters because a valuable new electronic tool necessary to read a terrorist's e-mail pursuant to a court order had the hypothetical potential to be abused – as any law enforcement tool could be.

Everyone understands why and how some of our basic rules changed after September 11. America declared war on al-Qaeda and Bin Laden and the Congress and President put the country on a war footing. It's important to remember that war changed these rules and the FBI, CIA and the rest of the government can only be judged prior to September 11 by the preexisting rules.

### SOME RECOMMENDATIONS

1. Provide legal authority and significant new funding enabling the FBI to manage information technology and deal with encryption.
2. Significantly increase the number of FBI Special Agent and Support positions with sufficient compensation required to recruit and retain the best men and women to combat terrorism. Today the FBI only has 11,948 Special Agents, 267 more than its 11,681 complement in 1999. No way to fight a war!
3. Significantly increase the FBI's technical support program and facilitate the FBI's access to emerging technologies and research and development by the private sector.
4. Significantly increase the number and staffing of FBI Legat Offices overseas. We had 44 in September, 2001 and as we fight this war today, there are only 46.

5. Exempt the FBI from the compensation restrictions of Title V.
6. Change the FBI's procurement procedures to facilitate the efficient design and acquisition of equipment and technology.
7. Provide new funding for the FBI's international training programs and put the FBI in charge of all international law enforcement training.
8. Fund whatever it takes to achieve interoperability between all the agencies engaged in the war against terrorism.
9. Restructure the budget to give more flexibility to the DCI, Attorney General and the FBI Director to better allocate program funding and resources as missions evolve and new threats emerge.
10. Consider establishing a domestic public safety office in the Executive with responsibility for coordinating and supporting national law enforcement issues.
11. Enhance the legal, technical and funding resources of the FBI rather than consider creating an intelligence agency to share its domestic, public safety responsibilities. America neither requires nor is it in our interest to stand up a Secret Domestic Police force. The separation between intelligence gathering from law enforcement jeopardizes our national security. We must instead strengthen communication and coordination between intelligence operations and law enforcement.

## CONCLUSION

The FBI and CIA working together have accomplished much in fighting terrorism at home and abroad but it is a constant and continuing battle. These agencies should remain the primary counterterrorism agencies for this mission. The DCI's authority for coordinating and implementing government-wide efforts in this regard should be expanded. The war against terrorism must be waged relentlessly and directed by our political leaders. It will require that significantly more resources be allocated to the FBI and CIA. These fine agencies and the brave men and women who fight this war cannot defeat some forms of terrorism without total government intervention no matter how great and heroic their efforts. al-Qaeda-type organizations, state sponsors of terrorism like Iran, and the threats they pose to America are beyond the competence of the FBI and the CIA to address. America must maintain the will in some cases to use its political, military and economic power in response when acts of war are threatened or committed against our nation by terrorists or their state sponsors. We have now seen how war is declared and waged against terrorists who attack our nation. The painful lesson is that fighting terrorism without such a declaration of war is unlikely to be successful.

Finally, however treacherous the enemy, the FBI must fight this war as a law enforcement agency of the Department of Justice governed by the Rule of Law and the Constitution. The rules, statutes and guidelines which establish the legal authorities of the FBI may change – as

they did after September 11 – as long as those changes are clearly defined and understood. Its adherence to the Constitution and the Rule of Law must not change. We do not have to sacrifice our freedom to protect it.